

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL KAUFFMAN,

Plaintiff,

v.

WERNER ENTERPRISES, INC. and
WILLIAM F. JINES,

Defendants.

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CIVIL ACTION NO. 05-4264

MEMORANDUM

BUCKWALTER, S. J.

May 11, 2006

Presently before the Court are Defendants' Motion for Partial Summary Judgment to Limit Plaintiff's Claims Based Upon Collateral Estoppel (Docket No. 12), Plaintiff's Reply (Docket No. 14), Defendants' Reply (Docket No. 15) and Plaintiff's Surreply (Docket No. 16). For the reasons set forth below, Defendants' Motion is granted.

I. BACKGROUND

The instant matter stems from a motor vehicle accident which occurred on August 8, 2003 (the "Accident"). Plaintiff, in the course and scope of his employment, was driving a pick-up truck owned by Quality Service Beverage ("Quality Beverage") when he was struck by a tractor trailer operated by Defendant William F. Jines and owned by Defendant Werner Enterprises, Inc. After the Accident, Plaintiff received workers' compensation benefits for an abrasion on the right side of his head, acute neck strains and sprains, and acute low back strains and sprains. Quality Beverage filed a petition to terminate Plaintiff's workers' compensation

benefits on June 13, 2004, claiming that Plaintiff had fully recovered from his injuries. On July 1, 2004, Plaintiff filed a petition in the Workers' Compensation Court to amend the description of his injuries. Plaintiff "requested that it include injuries from the . . . [Accident] in the nature of herniated discs at T5-6, T7-8, T11-12 and L5, S1." (Defs.' Mot. Ex. D at 3.)

After considering testimony from Plaintiff, Plaintiff's treating orthopedist and an orthopedist retained by Quality Beverage, the Workers' Compensation Court issued a final decision on April 18, 2005 concerning Quality Beverages's petition to terminate compensation and Plaintiff's petition to review compensation benefits. The Workers' Compensation Court found "based on the record as a whole that Claimant did not suffer herniated discs in his thoracic spine or a herniated disc in his lower back as a result of the . . . [Accident]." Id. at 6. Further, the Workers' Compensation Court determined that Plaintiff had fully recovered from the Accident as of May 21, 2004 and concluded that Plaintiff was able to return to work without restriction as of May 21, 2004. Id.

Plaintiff appealed the Workers' Compensation Court's decision. However, prior to the appeal being heard, Plaintiff entered into a settlement agreement with Quality Beverage.

On July 18, 2005, Plaintiff initiated the instant matter against Defendants for injuries sustained in the Accident. In his Complaint, Plaintiff alleges that he sustained:

severe, permanent, life-altering injuries, including but not limited to, herniated discs at the T-5, T7-8, T8-9, T-11-12 and L5-S1 levels; psychological injuries; cervical strain/sprain; and abrasions to the head; as a result thereof, he has suffered and probably will in the future, continue to suffer pain and agony, to his great detriment and loss.

(Compl. ¶ 17.) Plaintiff also alleges that he has suffered “loss of earnings and earning capacity” because of the Accident. Id. ¶ 20.

II. DISCUSSION

In their Motion for Partial Summary Judgment, Defendants ask the Court to strike all claims for thoracic and lumbar herniations, ongoing physical injuries after May 21, 2004, lost wages after May 21, 2004, and loss of earning capacity because they are barred by the doctrine of collateral estoppel. Collateral estoppel applies under Pennsylvania law where the following prerequisites are met:

(1) An issue decided in a prior action is identical to one presented in a later action; (2) The prior action resulted in a final judgment on the merits; (3) The party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4) The party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.

Jones v. United Parcel Service, 214 F.3d 402, 405-06 (3d Cir. 2000) (citing Rue v. K-Mart Corp., 552 Pa. 13, 713 A.2d 82, 84 (Pa. 1998)). As discussed below, the Court believes Defendants’ assertion of collateral estoppel is proper.

A. This case presents identical issues to the workers’ compensation case

Plaintiff alleges in his Complaint, *inter alia*, that he sustained herniated discs in the thoracic and lumbar spine as a result of the Accident, that he has not recovered from injuries resulting from the Accident, that he lost wages after May 21, 2004 because of the Accident, and that he lost his earning capacity. Defendants contend that these injuries and damages were considered by the Workers’ Compensation Court.

First, with respect to the herniated discs allegedly sustained by Plaintiff, in reaching its decision of May 21, 2004, the Workers' Compensation Court considered evidence regarding the injuries sustained by Plaintiff as a result of the Accident. The Workers' Compensation Court concluded that the only injuries sustained by Plaintiff were strains and sprains of the lower back and neck; it found that Plaintiff did not sustain herniated discs in the thoracic spine or lower back as a result of the Accident. Thus, it is clear that the Workers' Compensation Court considered these injuries.¹

Second, with respect to Plaintiff's alleged ongoing injuries and Plaintiff's request for damages because of same, the Workers' Compensation Court determined that Plaintiff fully recovered from the Accident as of May 21, 2004. The Court concludes that the Workers' Compensation Court considered this issue as well.

Third, regarding Plaintiff's claims for lost wages after May 21, 2004 and loss of earning capacity, the Workers' Compensation Court concluded that Plaintiff could return to his job without restrictions as of May 21, 2004. Because the Workers' Compensation Court found that Plaintiff could return to his job and that Plaintiff was fully recovered, which was discussed in the preceding paragraph, the Court believes the Workers' Compensation Court considered the lost wages and earning capacity issues.

1. One of Plaintiff's arguments for denying Defendants' Motion involves Plaintiff's former attorney's failure to include a disc herniation at T8-9 in the description of injury filed in the Workers' Compensation Court. Because of this failure, Plaintiff believes that this issue was not considered by the Court and therefore the first element of collateral estoppel does not apply. The Court disagrees because the Workers' Compensation Court found that Plaintiff did not sustain herniated discs in his thoracic spine or lower back as a result of the Accident. (Defs.' Mot. Ex. D at 6.) Although the disc herniation at T8-9 was not specifically mentioned in the description, Plaintiff's evidence of disc herniation was considered by the Workers' Compensation Court.

In conclusion, the Court finds that the case before the Workers' Compensation Court and the instant matter have identical issues with respect to Plaintiff's alleged herniated discs, ongoing injuries, lost wages since May 21, 2004, and earning capacity. Therefore, the first prerequisite of collateral estoppel is met.

B. The Workers' Compensation Court's decision is a final judgment on the merits

The Workers' Compensation Court rendered its decision regarding Plaintiff on April 18, 2005. In Pennsylvania, decisions of workers' compensation courts, including their findings of fact, have been given preclusive effect. Jones, 214 F.3d at 406. Plaintiff argues that the Workers' Compensation Court decision is not final because Plaintiff appealed the decision and the parties entered into a settlement agreement before the appeal was heard. In Pennsylvania, a judgment is final for the purposes of collateral estoppel unless or until it is reversed on appeal. Basset v. Civil Serv. Comm'n of Phila., 514 A.2d 984, 986 (Pa. Commw. Ct. 1986). In the instant matter, the decision of the Workers' Compensation Court was not reversed on appeal; Plaintiff abandoned his appeal of the decision. Therefore, the decision is a final judgment, and this prerequisite is met.

C. Plaintiff was a party to the workers' compensation case

In this action, Defendants assert collateral estoppel against Plaintiff based on the decision of the Workers' Compensation Court. Because Plaintiff was a party in the matter before the Workers' Compensation Court, the third requirement of collateral estoppel is satisfied.

D. Plaintiff had a full and fair opportunity to litigate the issues before the Workers' Compensation Court

In the matter before the Workers' Compensation Court, Plaintiff had the opportunity to present evidence as to his injuries and damages. The Court believes this requirement is met.

III. CONCLUSION

The Court believes Defendants properly assert collateral estoppel. Therefore, Defendants' Motion for Partial Summary Judgment to Limit Plaintiff's Claims Based Upon Collateral Estoppel is granted. Plaintiff's claims of thoracic and lumbar herniations, lost wages beyond May 21, 2004, loss of earning capacity, and ongoing physical injuries after May 21, 2004 are stricken.

An order follows.

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ORDER

AND NOW, this 11th day of May, 2006, upon consideration of Defendants' Motion for Partial Summary Judgment to Limit Plaintiff's Claims Based Upon Collateral Estoppel (Docket No. 12), Plaintiff's Reply (Docket No. 14), Defendants' Reply (Docket No. 15) and Plaintiff's Surreply (Docket No. 16), it is hereby **ORDERED** that Defendants' Motion is **GRANTED**. Plaintiff's claims of thoracic and lumbar herniations, lost wages beyond May 21, 2004, loss of earning capacity, and ongoing physical injuries after May 21, 2004 are stricken.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.

RONALD L. BUCKWALTER, S.J.